



Paper No. 32

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OFFICE OF PETITIONS

In re Application of Gary K. Michelson :
Application No. 08/354,450 : DECISION ON PETITION
Filed: December 12, 1994 :
Attorney Docket No. P10936V :

This is a decision on the petition filed July 23, 2002, pursuant to 37 CFR 1.137(b), to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned as a result of petitioner's failure to timely file a proper Appeal Brief. A final Office action was mailed on March 4, 1996, which set a shortened statutory period for reply of three months. Petitioner obtained a two month extension of time and replied with a Notice of Appeal on August 6, 1996 (Certificate of Mailing dated August 4, 1996). Accordingly, petitioner had two months from the filing of the Notice of Appeal, or until October 6, 1996, to file an Appeal Brief in triplicate. No Appeal Brief having been received, the above-identified application became abandoned on October 7, 1996. A Notice of Abandonment was mailed on March 19, 1997.

With the instant petition, petitioner filed an Appeal Brief in triplicate, and met all other requirements for a grantable petition under 37 CFR 1.137(b).

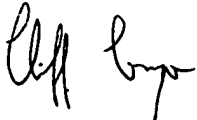
The above-identified application has been abandoned for an extended period of time. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting the statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.¹

¹ See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178; 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109) (applicant obligated under 37 CFR 10.18 to inquire into the underlying facts and circumstances when providing the statement required by 37 CFR 1.137(b) to the Patent and Trademark Office).

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay.² In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

The application file is being forwarded to Technology Center 3700 for review of the Appeal Brief by the examiner.

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-0272.



Cliff Congo
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

² See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997).